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In re Application of:
FENG, Jimming, et al.
U.S. Application No.: 10/580,374
PCT No.: PCT/CN04/01335
Int'l Filing Date: 23 November 2004
Priority Date: 28 November 2003
Atty Docket No.: INNP 2 00061
For: INK CARTRIDGE

DECISION ON RENEWED
PETITION
(37 CFR 1.47(a))

This decision is issued in response to applicants' renewed petition under 37 CFR 1.47(a) and filed 31 August 2007. No additional petition fee is required.

BACKGROUND

The procedural background for the present application was set forth in the decision mailed herein on 16 July 2007, which dismissed applicants' petition under 37 CFR 1.47(a) for failure to satisfy the requirements of a grantable petition. Specifically, applicants had failed to provide an adequate showing that the non-signing inventor has refused to execute the application or cannot be located after diligent effort.

On 31 August 2007, applicants filed the renewed petition considered herein.

DISCUSSION

The decision mailed 16 July 2007 indicated that applicants' petition did not provide an adequate showing that the non-signing inventor had refused to execute the declaration herein. Specifically, the decision found that the statements submitted in support of the petition did not make clear that the inventor had refused to execute the declaration herein (the statements refer instead to "assignment and power of attorney forms"), and that applicants had not provided the exhibits referenced in such statements.

In the renewed petition, applicants have provided revised statements in which the "power of attorney" forms referred to in the original statements are now identified as "combined declaration/power of attorney" forms. The revised statements therefore clarify that the forms forwarded to the non-signing inventor, and which the non-signing inventor has stated that he will not sign, include the declaration required herein. Applicants have also provided copies of the emails referred to in the revised statements. Based on this submission, applicants have now

provided an adequate showing that the non-signing inventor has refused to execute the declaration herein, satisfying this requirement for a grantable petition under 37 CFR 1.47(a).

However, a further review of the declaration filed herein on 23 May 2006 reveals a defect in such declaration. Specifically, the declaration identifies the first inventor as Jinming FENG (the present petition also refers to this inventor by this name); however, the published international application identifies this inventor as Jinming FUNG.

Section 1893.01(e) of the MPEP states the following regarding disparities between the name listed for an inventor in the declaration and that set forth in the international application:

Where ... the name of an inventor indicated in the international application during the international phase has changed such that the inventor's name is different from the corresponding name indicated in an oath or declaration submitted under 37 CFR 1.497, for example, on account of marriage, then a petition under 37 CFR 1.182 will be required to accept the oath or declaration with the changed name. See MPEP § 605.04(c). However, where the discrepancy between the name of the inventor indicated in the international application during the international phase and the name of the inventor as it appears in the oath or declaration submitted under 37 CFR 1.497 is the result of a typographical or transliteration error, then a petition under 37 CFR 1.182 will not be required. In such case, the Office should simply be notified of the error.

Before the declaration filed herein can be accepted, applicants must resolve the disparity between the first inventor's name as set forth in the declaration and the international application. As discussed in the MPEP, if the inventor's name as set forth in the declaration is correct (i.e., Jinming FENG), and if the disparity in the inventor's name is the result of a typographical or transliteration error in the international application, then applicants need only submit a statement confirming that this is the case. If the inventor's name has actually been changed since the filing of the international application, then a petition under 37 CFR 1.182 would be required. Finally, if the inventor's name is actually Jinming FUNG, as set forth in the international application, then a newly executed declaration properly identifying this inventor must be filed.

Until the disparity in the first inventor's name is resolved, the declaration filed herein cannot be accepted in satisfaction of the declaration requirement of a grantable petition under 37 CFR 1.47(a). Accordingly, the petition cannot be granted on the present record.

CONCLUSION

The renewed petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for

reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must include the materials required to clarify the disparity between the first inventor's name as set forth in the declaration and in the international application, as discussed above. No additional petition fee is required.

Failure to file a proper response will result in abandonment of the application.
Extensions of time are available under 37 CFR 1.136(a)

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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